

**MINUTES
STATE HEALTH FACILITIES COUNCIL
JANUARY 19, 2012
LUCAS STATE OFFICE BUILDING
321 EAST 12TH STREET
FIFTH FLOOR, ROOM 524
DES MOINES, IOWA
ELECTRONIC MEETING**

This electronic meeting of the State Health Facilities Council was held in accord with section 21.8 of the Code of Iowa entitled "Electronic Meetings." The Code states that a governmental body may conduct a meeting by electronic means only if circumstances are such that a meeting in person is impossible or impractical, and if the governmental body complies with the provisions of section 21.8. It was impractical for the Council to hold an in-person meeting to discuss non-reviewability determinations and a rehearing request because of the expense in assembling the Council in person, time commitments of the Council members, and the anticipated short nature of the meeting. This electronic meeting was held in Conference Room #524, 5th Floor, Lucas Building. Notices and agendas were posted in the building and on the CON web page.

I. 10:00 AM ROLL CALL

MEMBERS PRESENT VIA PHONE: Bill Thatcher, Chairperson, Marc Elcock, Vergene Donovan, Bob Lundin and Roberta Chambers were present via phone.

STAFF PRESENT: Barb Nervig, Heather Adams, Counsel for the State and Randy Dahlin, IDPH health physicist (present in the conference room).

OTHERS PRESENT: Ed McIntosh of Dorsey & Whitney and Caroline Giddings, general counsel for Mercy representing Mercy Medical Center—Cedar Rapids; Doug Gross and Katie Cownie of Brown Winick and Dennis Winders and Scott Kallemeyn representing St. Luke's Hospital in Cedar Rapids, were present via phone. Also present via phone from the University of Iowa Hospitals and Clinics were Dr. John Buatti, Professor and Head of the Department of Radiation Oncology; Edward Pennington, physicist; William Hesson, Legal Counsel and Associate Vice President of Legal Affairs and John Staley, PhD, Interim COO and Senior Associate Director. The individuals from UIHC were not on the phone for Item III.

II. REQUESTS FOR DETERMINATION OF NON-REVIEWABILITY AND THE DEPARTMENT'S RESPONSES

1. SE Iowa Open MRI, Burlington, Lee County: Acquire MRI -- \$1,497,927.40.

Staff report by Barb Nervig. A motion by Chambers, seconded by Elcock to support the Department's determination carried 5-0.

2. University of Iowa Hospital's & Clinics, Iowa City, Johnson County: Purchase Intrabeam radiotherapy system for intraoperative breast irradiation -- \$371,850.

Staff report by Barb Nervig. Ms. Nervig summarized the request from St. Luke's to investigate the equipment to be purchased by UIHC to determine if a CON is required. Ms. Nervig also stated that she recalls the discussion that took place when the radiation

therapy services were added to Iowa Code 135.61(18)“m” and there was emphasis on the term megavoltage.

Representing the University of Iowa Hospitals and Clinics were Dr. John Buatti, Professor and Head of the Department of Radiation Oncology; Edward Pennington, physicist; William Hesson, Legal Counsel and Associate Vice President of Legal Affairs and John Staley, PhD, Interim COO and Senior Associate Director.

Randy Dahlin, health physicist with the IDPH, answered some technical questions from the Council. Mr. Dahlin described the Intrabeam as basically an x-ray tube that emits 50 kilo electron volts, which is recognized as low dose. Mr. Dahlin stated that similar equipment is in use at two hospitals in Iowa, Covenant in Waterloo and Genesis in Davenport, for giving radiation dose post surgery. UIHC will be administering the radiation dose during surgery. Because of the shield and low energy, others can be safely in the room at the same time the dose is administered. Mr. Dahlin also stated that it makes no sense to take the amount of energy times the time of exposure to equate low voltage equipment with megavoltage equipment, as the definition of a piece of equipment as “low” versus “megavoltage” is dependent upon the voltage the equipment is capable of producing and therefore the radiation dose rate that is emitted by the machine.

A motion by Lundin, seconded by Chambers to support the Department’s determination carried 5-0.

III. REQUEST FOR REHEARING

In the matter of the application of St. Luke’s Hospital, Linn County to establish radiation therapy services through the purchase of an intraoperative radiotherapy system at an estimated cost of \$1,200,000. The Council granted a Certificate of Need for this project on October 19, 2011 and issued the written decision on December 20, 2011.

On January 4, 2012, a timely request for rehearing was filed by Mercy Medical Center—Cedar Rapids, an affected party who participated in the formal review procedure.

The Council, after reading the request for rehearing and the resistance, hearing oral statements from Mr. McIntosh and Mr. Gross, and receiving answers to questions, concluded that none of the grounds for rehearing contained at 641 IAC 202.9 had been satisfied.

A motion by Donovan, seconded by Chambers to DENY a rehearing carried 4-1. Elcock voted no.

The meeting was adjourned at 11:00 AM.

The next meeting of the Council will be April 4, 2012.